

New Hampshire



September 25, 2023

Commissioner Lori Weaver Via Email: Lori.A.Weaver@dhhs.nh.gov
Melissa Hardy, Director DLTSS Via Email: Melissa.A.Hardy@dhhs.nh.gov
Office of the Commissioner
New Hampshire Department of Health and Human Services
129 Pleasant Street
Concord, NH 03301

Re: Access to Community Integration/Recreational Services for Adults and Children with Developmental Disabilities

Dear Commissioner Weaver:

The Quality Council appreciates your attendance at our August 2023 meeting and hearing of your thoughtful commitment to working with us toward making our Developmental Services System the best it can be. Although we discussed numerous initiatives and issues, this letter serves to detail the concerns around the interpretation of CMS guidelines related to services deemed recreational or diversional in nature, and the impact of those services being removed from people's service plans.

Philosophy

It is the Council's philosophy that the delivery system's primary objective should be to provide any supports needed for an individual to live and experience a life and lifestyle that is equitable to one experienced by fellow citizens who do not experience disabilities. That is, to have access to all of human life's major domains: health and safety, education, work opportunities, relationships, and social interactions, among others. By definition, social interactions for most of us include recreating with our peers. It is clear that access to all of these domains were included within the intent of RSA171-A via the following:

Under Section 171-A:13, the State offers the following guarantees:

"Every developmentally disabled client has a right to adequate and humane habilitation and treatment including such psychological, medical, vocational, social, educational or rehabilitative services as his condition requires to bring about an improvement in condition within the limits of modern knowledge."

The "...limits of modern knowledge" standard is a very high and intentionally broad standard which was explicitly written into the law to allow for the constant application of "best practices" as the system evolves and allows for very individualized services.

Stephanie Patrick, Chair
Disability Rights Center - NH

Isadora Rodriguez-
Legendre, Vice Chair
*NH Council on
Developmental Disabilities*

Members

Marissa Berg
Community Support Network, Inc

Rich Crocker
Area Agency Board Member

Donna Corriveau
*Direct Support Professional
Member*

Adrienne Evans
NH Council on ASD Member

Jessica Gorton
Bureau of Developmental Services

Karen Hatch
Family Support Council Member

Emily Manire
Private Provider Network

Tammy Mills
People First of New Hampshire

Jim Piet
*NH Council on
Developmental Disabilities*

Adam Schrier
Brain Injury Association of NH

Ann Sanok
Area Agency Board Member

Cathy Spinney
Area Agency Board Member

Lisa Steadman
Family Support Council Member

Mary St. Jacques
Institute on Disability

Sarah Tollefsen
ABLE NH

It was good to hear you state that you agreed with the Council in principle that access to recreation was something that must be retained given that, for most of this population, their main access to the community is via social/recreational activities with peers who do not experience disabilities. The activities are, for them, often therapeutic in nature and a necessary component to their meeting behavioral/social and other ISP goals. These opportunities foster feelings of being part of the greater society, of belonging.

The Problem

The current barrier to people keeping social/recreational goals in their service plans is CMS's refusal to provide matching Medicaid funds to pay for them. It is solely a funding issue. CMS's refusal to pay for these services does not negate the State's responsibility to provide them. The State's immediate task is to identify a sustainable funding stream solely from state dollars within the BDS budget.

Short Term Possible Solutions

The Council asks that the State identify a reliable short-term funding source so these services can be restored to individual service plans immediately. Family Support dollars are not adequate to meet the demand on an ongoing basis, and the Area Agencies were not given any additional funds in their latest contracts to absorb the costs either.

Some areas to explore are using ARPA funds; allocating any funds deemed discretionary within the BDS budget already; moving lapsed dollars into a short-term/dedicated pool of funds targeted for this purpose specifically. The Council is willing to brainstorm other ideas as they occur.

Long Term Possible Solutions

The Council would like the State to take a more active advocacy role in pushing back at CMS around its current interpretation. The interpretation is narrow and is in direct conflict with their own guidelines around what an integrated life looks like within the mechanism of a Person-Centered Plan. The Council will be available to assist in crafting the messaging if helpful.

The Council would like the State to work with our Federal Legislative Delegation to craft and promote any necessary legislation to change this particular CMS position, which they state is ensconced in law, and broaden access to matching funds for recreation.

The Council suggests DHHS include in the next biennium's budget request a specific line item to fund this part of service plans using state dollars only. The justification is that it is necessary to be compliant with the expressed intent RSA171-A.

Under the System Re-Design, can we entertain the idea of a Service Plan consisting of two distinct parts; Part A - Waiver Services. These services are ones we know are allowable for matching Medicaid funds. Part B – Non-Waiver Services. These services would be where we can put recreational services with the understanding they would be paid for with solely State dollars. Then the identified rates can be applied for billing purposes. In this way the State can comply with RSA171-A.

Summary

The Council is concerned that barriers to accessing one of life's major domains are being placed in front of this particular constituency in violation of RSA171-A and Olmstead. The result of being denied this access for the individual is even greater isolation from the community and society at large. Requiring that services can only be Medicaid eligible if they are provided by therapists et al in settings not available to the general public is a worrying reversion to "medical model" thinking. Families already are required to plug so many holes with their time and money and they are maxing out. The burdens are being increased on those least able to carry them. This has never been the New Hampshire way since the system's inception. The Council would like to foster a return to true collaboration within this delivery system – the three-legged stool approach wherein the Individual and their Family, the Area Agency/Provider Network, and the State are each a leg, relying on the other two legs to help the system thrive. The stool, the "system", cannot exist or fulfill its intentions without the support of the others.

The Council looks forward to your response by October 25, 2023, to this letter and the ideas contained within it. We ask for a written response within 30 days of receipt of this letter. We welcome your input and future collaboration toward the achievement of our collective goals.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Patrick". The signature is written in a cursive, flowing style.

Stephanie Patrick, Council Chair

Isadora Rodriguez-Legendre, Council Vice-Chair